IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18247 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TIRTHRAJ SADASHIV DIVEKAR - Petitioner(s)
Versus
GOVT. OF INDIA & 1 - Respondent(s)

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Appearance :
MR MS MANSURI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
MR SK PATEL for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 04/08/2006

ORAL JUDGMENT

1. The petitioner is an ex-employee of the respondent no.2. He challenges the action of the respondents in withholding a portion of his retiral benefits.

2. With respect to the assertion of the petitioner that respondent no.2 is a Government Company and is, therefore, amenable to the writ jurisdiction of this Court, no dispute is raised by the respondent either in the affidavit in reply or through oral averments. The writ petition is, therefore, proceeded on the premise that the maintainability of the same is not in dispute.

3. Facts leading to the present petition are that the petitioner while serving with respondent no.2 was proceeded against departmentally for his having failed to encash certain bank guarantees given by a Company called M/s. Acme Petrochem Pvt. Ltd. Pursuant to the departmental inquiry held against the petitioner the disciplinary authority passed an order on 9/11/2000 dismissing him from service. The

petitioner preferred departmental appeal against the order of dismissal. The appeal was substantially allowed. The order of dismissal was set aside and a punishment of withholding of one increment was imposed. This order was passed by the Appellate Authority on 21/2/2001. The petitioner was reinstated in service pursuant to this order. Shortly thereafter he applied for voluntary retirement pursuant to Voluntary Retirement Scheme-2001 of the respondent no.2.

3.1. Respondent no.2 was of the opinion that it was the responsibility of the petitioner to ensure recovery of Rs.6,17,959/- from M/s. Acme Petrochem and while accepting the voluntary retirement offer of the petitioner it was provided that the said amount of Rs.6,17,959/- will be held back and only after payment of the same from M/s. Acme Petrochem the amount will be released. He was ordered to be relieved from service on VRS w.e.f. 31/3/2001. Pursuant to the decision of the respondent no.2 to accept the VRS of the petitioner by order dated 24/3/2001, a consequential order of actually retiring

the petitioner w.e.f. 31/3/2001 also came to be passed on 31/3/2001. Before that however, the petitioner came to know of the conditional acceptance of VRS by the Company writing a letter dated 21/3/2001 stating that he cannot be relieved on 31/3/2001 and his relief may be extended to 30/4/2001 so that he can make efforts to recover outstanding dues from M/s. Acme Petrochem. This request was however ignored by respondent no.2. By a subsequent letter dated 20th May, 2001, the petitioner also challenged the imposition of the condition of withholding the outstanding dues of M/s. Acme Petrochem. Yet again the petitioner wrote a letter on 4th June, 2002 reiterating his stand in this regard.

4. I have heard learned advocate Shri Mansuri for the petitioner and Shri Patel for respondent no.2 at length.

5. From the material on recored and the submissions made by learned advocates appearing for the parties, I find that in the order of dismissal passed against

the petitioner by the disciplinary authority there was no stipulation that amount of loss caused to respondent no.2-Company should be recovered from the petitioner. In the appellate order also passed on 21/2/2001 the appellate authority while substituting the order of dismissal by that of withholding of one increment, never envisaged that the amount of Rs.6,17,959/- ought to be recovered from the petitioner in case of M/s. Acme Petrochem failed to deposit the same. In that view of the matter respondent no.2 was not justified in suggesting that it was the sole duty of the petitioner to make good the loss. In any case the petitioner has been contending that it was not his individual responsibility to recover the amount from the defaulting Company. Be that as it may, the question involved in this petition is whether the respondent no.2 while accepting the request of the petitioner for VRS, could have imposed the condition that the petitioner should make good the loss caused to respondent no.2 on account of M/s. Acme Petrochem not having paid the aforementioned amount.

6. In case of Bank of India & Ors. vs. O.P.Swaranakar etc. reported in AIR 2003 SCC 858, the Hon'ble Supreme Court held that the VRS scheme is an invitation to offer. It was held that in the scheme there is absolute discretion vested in the society whether to accept or reject the request of the employees. Retirement would take effect only after request is accepted. The scheme is, therefore, only an invitation to offer. Application filed by an employee, therefore, would be an offer which can be withdrawn before it is accepted. Thus, the VRS scheme of respondent no.2 would be in the nature of an invitation to offer. The petitioner's application for VRS, therefore, would amount to an offer of the employee. Such an offer could have been either accepted or rejected. Respondent no.2 had sufficient discretion to refuse to accept such an offer if it was found that the employee is taking undue advantage of his position. However, it was not open for the respondent no.2 to accept the offer conditionally. The offer of the petitioner could have been accepted or rejected unconditionally. If respondent no.2 wanted to put a condition before acceptance of the

offer of VRS by the petitioner, the same would amount to counter offer and cannot take form of acceptance of the offer so as to bring about a concluded contract. These principles flow from the provisions contained in Section 7 of the Indian Contract Act which provide that in order to convert a proposal into a promise the acceptance must be absolute and unqualified. In the Commentry by PollocK & Mulla (12th Edition) under the said section of the Indian Contract Act it is stated that “A valid acceptance of proposal must be absolute and unconditional. It must extend to all terms of a proposal. If the proposed acceptance is conditional or qualified, it does not create contractual relationship. It becomes a counter proposal, which may become a contract on the terms offered by the offeree if the proposer accepts it. Such an acceptance would revoke the offer, and the contract cannot be revised on original terms by withdrawing the conditional acceptance”. It is further stated that “An acceptance with variation in terms of the proposal or with a qualification is a counter proposal which must be accepted by the original offerer before a contract is made”. “If

acceptance is made conditional, it amounts to rejection of the original offer and no concluded contract comes into existence".

7. The condition that entire amount of Rs.6,17,959/- be withheld from the VRS benefits of the petitioner and be released only after and to the extent M/s. Acme Petrochem pays out the same to respondent no.2 Company, was itself an onerous condition which could not have been thrust upon the petitioner. If respondent no.2 had this condition in mind before which the VRS offer of the petitioner was not to be accepted, the same should have been spelt out and brought to the notice of the petitioner permitting him to make a choice including to withdraw his offer of VRS. Respondent no.2 could not have taken a unilateral and a final decision in this regard binding the petitioner with an onerous condition for acceptance of VRS. The question can be looked from a slightly different angle. The petitioner applied for VRS on the basis of the calculations of post retirement benefits flowing from VRS scheme. If the employer found that the

application of the petitioner did not deserve to be accepted, it was open to reject the same. However, by putting the condition of withholding a certain amount from the entitlement of the petitioner the employer materially changed the terms and conditions of the VRS. This could not have been done unilaterally and without giving the petitioner an opportunity to withdraw his offer.

8. In the result the said condition cannot be legally sustained. The condition in the order dated 24th March, 2001 is, therefore, quashed. The petitioner shall receive the said amount from respondent no.2. In special facts of the case if same is paid within four weeks from the date of receipt of a copy of this order the petitioner shall not be entitled to receive any interest on the delayed release of the said amount. However, if repayment of the amount in question is delayed the petitioner is entitled to simple interest at the rate of 8% p.a. from the date of completion of the said period till its actual payment. It may be noted that the petitioner also sought to suggest that on this

condition he would not be interested in accepting VRS. He was however not permitted to resign from his position on the ground that VRS once accepted becomes final.

9. In the result the petition is allowed. Rule is made absolute. At the request of learned advocate Shri Patel this order shall stand stayed upto 25/8/2006.

(Akil Kureshi, J.)

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